

LFC Requester:**Theresa Rogers**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date February 3, 2016

Bill No: SB 275

Sponsor: Sen. William E. Sharer

Agency Code: 305

Short Conviction in Certain Courts

Person Writing M. Anne Kelly, AAG

Title: as "Adults"

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

HB 296

SB 257

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

SB 275 amends NMSA 1978, § 31-21-5 in the Probation and Parole Act by amending two definitions in subsections (E) and (F).

Subsection (E) amends the definition of "director" to mean "the director of the adult probation and parole division of the corrections department or any employee designated by the director."

Subsection (F) amends the definition of "adult" to include "any person convicted of a crime by a district, magistrate or metropolitan court."

FISCAL IMPLICATIONS

None known of.

SIGNIFICANT ISSUES

The proposed amendment to subsection (F) is likely the result of the recent New Mexico Court of Appeals opinion in *State v. Trevor Begay*, 2016-NMCA-____, ____ P.3d ____ (Jan. 13, 2016).

In *Begay*, the Court of Appeals ruled that the New Mexico Legislature did not intend for the tolling provision of the Adult Probation and Parole Act to apply to persons convicted in magistrate courts because the statutory definition of "adult" is limited to persons "convicted of a crime by a district court."

This tolling provision of the Adult Probation and Parole Act, Section 31-21-15(C), requires a court to determine whether the time from the date of a probation violation to the date of a probation violator's arrest – or any part of that time – shall be counted as time served on probation. In other words, the tolling provision enables courts to preclude probationers from earning credit towards their probation while they are on absconder/fugitive status.

However, as a result of *Begay*, persons convicted of crimes and who are placed on probation in

magistrate, metropolitan, or municipal courts, will continue to earn credit towards their probation even if they abscond and completely avoid the consequences of their probation.

Prior to *Begay*, courts have been operating under the assumption that the tolling provision applied to all absconders from district courts and lower courts.

PERFORMANCE IMPLICATIONS

None known of.

ADMINISTRATIVE IMPLICATIONS

None known of.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is identical, with one exception, to HB 296 and SB 257. The only difference is that this bill does not include “municipal” courts in its amended definition of “adult.”

TECHNICAL ISSUES

None known of.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If this bill is not enacted, persons convicted of crimes and placed on probation in magistrate and metropolitan courts may avoid the consequences and rehabilitative goals of their probation by absconding until their term of probation ends.

Moreover, the term “director” will not be defined in a gender neutral manner, as proposed by this bill.

AMENDMENTS